

## CERTIFICATION REGARDING THE USE OF VOLUNTEER LABOR ON PUBLIC WORKS PROJECTS

The use of volunteer labor on State grant or loan funded projects may be precluded by the Labor Code. The pertinent sections of the Labor Code are attached. Interpretations of the Labor Code by the Department of Industrial Relations (DIR) indicate that all site work on all projects involving construction, alteration, demolition, installation, or repair work is subject to prevailing wage requirements. These requirements include paying prevailing wage for activities associated with these projects including activities sometimes done by volunteers such as mulching, planting seeds, seedlings, or vegetative stakes, trash removal, and other related groundwork. Planning and design work leading to construction are subject to the prevailing wage requirement. In addition, assessment work designed to provide planning and design information for a public works project is also likely subject to the prevailing wage requirement.

Some exemptions to the prevailing wage requirements were established in statute. These generally deal with low income housing and the work of nonprofit organizations in support of temporary housing. If you feel they may be applicable to your situation, you may apply to the Department of Industrial Relations for a ruling. (See their website <http://www.dir.ca.gov>)

Please complete the following form and return it to the State Water Resources Control Board Grant Analyst. Select one of the three statements by placing a check mark in the box. The form should be signed by your authorized representative or designated project director (the individual designated by your agency to sign for it). Your grant for financial assistance will not be executed until this form is completed and received by us.

- ☐ **NO.** I will not use volunteers on my project.
- ☐ **YES.** I will use volunteers on my project, BUT they will perform no construction, alteration, demolition, installation, or repair work, or work to support construction such as planning, design or assessments. Attached is a description of all work to be done by volunteers.
- ☐ **YES.** I will use volunteers on my project, AND they will perform construction, alteration, demolition, installation, or repair work, or work to support construction such as planning, design or assessments. Attached is an approval from the Department of Industrial Relations.

Name of Project: \_\_\_\_\_

Funding Program: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **Attachment – Volunteer Labor Form**

### Labor Code provisions

1771. Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages ... shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

1720. (a) ... "public works" means:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company .... For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(2) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. "Public work" does not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(3) Street, sewer, or other improvement work ...

(4) The laying of carpet ....

(5) The laying of carpet ....

(6) Public transportation ....

(b) For purposes of this section, "paid for in whole or in part out of public funds" means all of the following:

(1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.

(2) Performance of construction work by the state or political subdivision in execution of the project.

(3) Transfer by the state or political subdivision of an asset of value for less than fair market price.

(4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.

(5) Money loaned by the state or political subdivision that is to be repaid on a contingent basis.

(6) Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision.

(c) Notwithstanding subdivision (b):

(1) Private residential projects ....

(2) If the state or a political subdivision requires a private developer ... then only the public improvement work shall thereby become subject to this chapter.

(3) If the state or a political subdivision reimburses a private

developer ... de minimis ...,an otherwise private development project shall not thereby become subject to the requirements of this chapter.

(4) The construction or rehabilitation of affordable housing units....

(5) "Paid for in whole or in part out of public funds" does not include tax credits ....

(6) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects ....

(d) Notwithstanding any provision of this section to the contrary, the following projects shall not, solely by reason of this section, be subject to the requirements of this chapter:

(1) Qualified residential rental projects, ....

(2) Single-family residential projects ....

(3) Low-income housing projects ...

(e) If a statute, other than this section, or a regulation, other than a regulation adopted pursuant to this section, or an ordinance or a contract applies this chapter to a project, the exclusions set forth in subdivision (d) do not apply to that project.

(f) For purposes of this section, references to the Internal Revenue Code mean ....

(g) The amendments made to this section by either Chapter 938 of the Statutes of 2001 or the act adding this subdivision shall not be construed to preempt local ordinances requiring the payment of prevailing wages on housing projects.

1720.4. For the limited purposes of this chapter, "public works" shall not include any otherwise covered work which meets all the following conditions:

(a) The work is performed entirely by volunteer labor.

(b) The work involves facilities or structures which are, or will be, used exclusively by, or primarily for or on behalf of, private nonprofit community organizations including, but not limited to, charitable, youth, service, veterans, and sports groups or associations.

(c) The work will not have an adverse impact on employment.

(d) The work is approved by the Director of Industrial Relations as meeting the requirements of this section.

For purposes of subdivision (c), the director shall request information on whether or not the work will have an adverse impact on employment from the appropriate local or state organization of duly authorized employee representatives of workers employed on public works.